IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

MFA.No. 125 of 2001(C)

O.P (MV).NO.868/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, NEYYATTINKARA.
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APPELLANT/CLAIMANT:

T. REMA, W/O. VIDYADHARAN,
RESMI BHAVAN, PALLIVETTA, PAZHAYA THERVU,
ARYANAD.P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.B.JAYASURYA.

RESPONDENTS/ RESPONDENTS:
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1. **THE MANAGING DIRECTOR,**
   K.S.R.T. CORPORATION, TRANSPORT BHAVAN,
   THIRUVANANTHAPURAM DISTRICT.

2. **THANKAPPAN @ THAMPI, S/O. RAJAYYAN NADAR,**
   SARITHA VILASOM VEEDU, VAVODE,
   OTTASEKHARAMANGALAM,
   THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.JOHNSON P JOHN,SC KSRTC.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 125 of 2001

Dated this the 19th day of June, 2007

Judgment

Koshy, J.

Appellant met with an accident on 21.8.1995 due to the negligence of the driver of the vehicle owned by the first respondent. As a result of the accident, she sustained fracture on the clavicle and fracture on the left humerus and multiple fracture on the ribs. She had undergone treatment as an inpatient from the date of accident, that is, on 21.8.1995, till 5.9.1995. Thereafter also, she was continuing the treatment. Total compensation awarded was only Rs.46,720/- against a claim of Rupees Two lakhs. The only dispute is regarding the quantum of compensation. After discharge from the hospital, she was under plaster for four months. Thereafter, she had to undergo physiotherapy and she was advised not to take weight. Because of the rib fracture and other injuries, she cannot move freely. Ext.A3 is the wound certificate. Ext.A6 is the discharge certificate from the Medical College Hospital, Thiruvananthapuram. Ext.A12 is the disability

certificate issued by Dr. Samson Nessiah, Associate Professor, Department of Orthopaedics, Medical College Hospital, Thiruvananthapuram. In Ext.A12, it is stated that the appellant has fracture both clavicles and fracture of left humerus. Her permanent disability is assessed by Dr.Samson Nessiah as 11%. The doctor was examined as PW2 and proved the above certificate. Ext.A13 certificate showed that she had a total salary of Rs.2,813/- as on 1.10.1996. The appellant had taken leave for four months. She was aged 46 at the time of the accident. She was employed as a Staff Nurse in the Primary Health Centre. She was getting Rs.2,813/- per month as salary on the date of accident. Even though her employment was not lost, after the accident, she was compelled to do work with difficulties. She lost the opportunity to work after retirement. She was aged 46 at the time of accident. Age of retirement was 55. Normally, an experienced nurse, after retirement from service, will get job with higher salary in private hospitals. Because of the accident, she will not be able to work after retirement, but, after considering the total compensation for disability and loss of earning power only Rs.7,920/- was granted for four years after

retirement. We are of the view that she has to continue with the disability till the end of her life. Her right to get appointment after retirement is diminished. But for the accident, she could have accepted a job as Staff Nurse in a private hospital with higher salary. Taking into account all these circumstances and permanent injury certified by the doctor, we are of the view that at least Rs.10,000/- more ought to have been granted.

2. Even though it is argued that compensation granted under other heads are very meagre, considering the total amount granted, we are not enhancing the compensation under other heads. The above amount of Rs.10,000/- should be deposited by the first respondent with 8% interest from the date of application till its deposit. On deposit of the amount, the appellant is entitled to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.125/2001

JUDGMENT

Dated:19th June, 2007